GEORGE MARCHUK ET AL.

IBLA 94-653 Decided August 11, 1997

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting small miner certificate of exemptions and declaring mining claims abandoned and void.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   Certificates of exemption from payment of rental fees under the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), and implementing regulations are properly rejected where BLM records indicate that mining claimants jointly owned more than 10 mining claims on Aug. 31, 1993, and the claimants fail to show abandonment of "excess" claims on or before Aug. 31, 1993.

2. Evidence: Generally--Mining Claim: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   Mining claimants conveyance of "excess" claims after Aug. 31, 1993, militated against finding that mining claimants owned 10 or fewer claims as of Aug. 31, 1993.

APPEARANCES: George Marchuk, pro se and for Nikolaj Marchuk and Paul Marchuk.

OPINION BY ADMINISTRATIVE JUDGE TERRY

George Marchuk, Nikolaj Marchuk, and Paul Marchuk have appealed from a June 1, 1994, Decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting separate small miner exemption certifications (certifications) filed for 1993 and 1994, and declaring the claims identified in those certifications abandoned and void. The certifications were filed pursuant to the requirements of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), and applicable regulations.

In rejecting the certifications, BLM stated, "On the date of signing the exemption forms, August 30, 1993, [13 claims] were co-owned by Nicolaj and Paul Marchuk," because "each miner held an ownership interest in all 13 mining claims." See 43 C.F.R. § 3833.1-6(a). The BLM determined that "they did not meet the criteria for ownership of 10 claims or fewer under the small miner exemption." George Marchuk, BLM continued, did not have an ownership interest in the claims on August 30, 1993. The BLM concluded "[t]herefore, because Nikolaj Marchuk, Paul Marchuk, and George Marchuk failed to pay the rental fees and did not qualify for exemption on the date of signing, the small miner exemptions for 1993 and 1994 are rejected and the mining claims * * * are deemed abandoned and declared void." (Decision at 2.)

The undisputed facts contained in the case file are that, by quitclaim deed executed August 30, 1993, original locators K. Leslie Kirk and Earl Vegoren conveyed their interest in the 13 Federal claims at issue in BLM's Decision, jointly to Nikolaj Marchuk and Paul Marchuk. 1/ Also on that same date, George Marchuk and Paul Marchuk filed separate certifications for 1993 and 1994. The certifications filed by George Marchuk stated that he was the owner of 10 Federal mining claims bearing BLM serial numbers AA 071385 through AA 071387, AA 071389 through AA 071391, and AA 071396 through AA 071399. Paul Marchuk's certifications stated he was the owner of the other three Federal claims bearing BLM serial numbers AA 071381 through AA 071383. 2/ Along with the filing of their certifications on August 30, 1993, George Marchuk and Paul Marchuk each filed an affidavit of assessment work for 1993 (affidavit) stating that each was the owner of and had performed the required assessment work on the claims identified in their respective certifications.

Although the record does not contain a copy, it appears that, after receiving the certifications, BLM notified Nikolaj, George, and Paul Marchuk that it could not process them because it had no record of their ownership of the claims. The BLM repeated this notification on January 20, 1994.

On February 18, 1994, BLM received two quitclaim deeds, both executed on February 18, 1994. In the first, Nikolaj Marchuk conveyed to Paul Marchuk his interest in 3 of the 13 Federal claims at issue herein (AA 071381 through AA 071383) that had previously been conveyed jointly to Nikolaj and Paul Marchuk by Kirk and Vegoren on August 30, 1993, and which had been included in Paul Marchuk's certifications and affidavit.

1/ The BLM serial numbers of the Federal claims conveyed to Nikolaj Marchuk and Paul Marchuk are: AA 071381 through AA 071383, AA 071385 through AA 071387, AA 071389 through AA 071391, and AA 071396 through AA 071399. The conveyance also covered 17 Alaska State mining claims, not in issue herein (ADL 529015 through ADL 529030, and ADL 529037).

2/ Paul Marchuk's certifications also listed seven other claims not addressed by the BLM Decision, AA 529025 through AA 529030, and AA 529037.

In the second, Nikolaj Marchuk and Paul Marchuk transferred to George Marchuk their interest in the other 10 Federal claims. 3/

Appellants assert as follows:

> The Marchuks have been involved in litigation concerning said claims (see Appendix) with K. Leslie Kirk and Earl Vegoren since 1990, which judged the Marchuks as having ownership interest in these claims. As a part of the winding down of the Partnership Division, Quitclaim Deeds were issued August 30, 1993 transferring interest of said claims to the Marchuks. Final elements of the Partnership Division * * * were carried out through February 1994.

Referring to the BLM statement that the subject mining claims were co-owned by Nikolaj Marchuk and Paul Marchuk, Appellants state that "[c]learly, the partnership division had been accepted by your office, and we felt we had complied with the stipulation of co-owned claims counting toward the 10-claim limit." Appellants assert that they acted throughout on the advice of an unnamed BLM official.

On October 5, 1992, Congress passed the Act. A provision of that Act relating to mining established that

> for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act also contains an identical provision governing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79. The Act further provided, under certain conditions, for an exemption from the payment of the rental fees for claimants holding 10 or fewer claims, mill sites, or tunnel sites, the so-called small miner exemption. Id.

On July 15, 1993, the Department promulgated regulations to implement the rental fee provision of the Act. 58 Fed. Reg. 38186. Those

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3/ These claims are: AA 071385 and AA 071386, AA 071387 (denominated in error as AA 017387), AA 071389 (denominated in error as AA 017389), AA 071390 (denominated in error as AA 017390), AA 071391 (denominated in error as AA 017391), AA 071396 (denominated in error as AA 017396), and AA 071397 through AA 071399.

regulations included a section governing rental fee exemption qualifications, 43 C.F.R. § 3833.1-6(a), 58 Fed. Reg. 38199 (July 15, 1993), which substantially tracked the statutory language and set forth various conditions, all of which had to be met in order to qualify for the exemption. The regulation provided, in relevant part:

> (1) The claimant shall hold 10 or fewer mining claims, mill sites, and tunnel sites, on Federal lands in the United States. For purposes of determining the small miner exemption, oil shale claims will not be counted toward the 10-claim limitation for the small miner exemption to the $100 rental fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the rental fee in addition to filing for a small miner exemption.
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> (3) Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation, shall be counted toward the 10-claim limit for claimants that have an interest in these entities.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Chester Wittwer, 136 IBLA 96, 99 (1996); Harlow Corp., 135 IBLA 382, 385-86 (1996). Duly promulgated regulations have the force and effect of law and are binding on the Department and this Board. Kay Papulak, 132 IBLA 117, 119 (1995); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 249 (1990); Carl H. Alber, 100 IBLA 257, 260 (1987).

It is not disputed that on August 30, 1993, Paul and Nikolaj Marchuk co-owned at least 13 Federal mining claims (AA 071381 through AA 071383, AA 071385 through AA 071387, AA 071389 through AA 071391, and AA 071396 through AA 071399) by virtue of the quitclaim deed executed August 30, 1993. No rental fees were tendered for these claims.

[1, 2] To qualify for a small miner exemption under the Act, one had to file a certification attesting to the fact that he or she is the owner of 10 or fewer claims. Although the two August 30, 1993, affidavits of assessment work for the claims described above list the owners of these groups of claims, respectively, as George Marchuk and Paul Marchuk, the record does not support those statements. The joint owners of all 13 of these claims at that time were Nikolaj and Paul Marchuk, in the absence of a deed conveying the interest to Paul and George. 4/ Nothing shows that

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4/ Appellants' statement of reasons (SOR) strongly suggests that the Aug. 30, 1993, quitclaim deed from Kirk and Vegoren jointly to Nikolaj and Paul Marchuk was the only one issued prior to the Aug. 31, 1993, cut-off date.

the ownership pattern asserted in the August 30, 1993, affidavits was correct. The February 18, 1994, quitclaims in the record were untimely to effectuate any change of ownership relevant to the small miner exemption, as they occurred long after the August 31, 1993, deadline. Further, the fact that no quitclaim deed establishing that pattern was executed until February 1994 confirms that Nikolaj and Paul Marchuk held more than 10 claims on August 31, 1993, the cut-off date established by the Act, and were therefore not entitled to a small miner exemption.

Responsibility for satisfying the rental fee requirement of the Act, and implementing regulations, resides with the owner of the unpatented mining claim, mill site, or tunnel site. Lee H. and Goldie Rice, 128 IBLA 137 (1994). The Department is without authority to excuse lack of compliance with the requirements of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Nor may the Board consider special facts or provide relief in view of mitigating or extenuating circumstances. Id. Abandonment of the claims results where a mining claimant fails to either qualify for an exemption or pay the claim rental fees in accordance with the Act and regulations.

A final matter raised by Appellants concerns their stated reliance upon guidance from an unnamed BLM official. In determining whether the facts in this case warrant the application of estoppel principles, we look to the elements of estoppel set forth in United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970), as the initial test in determining estoppel questions presented to the Board. See, e.g., Carl Dresselhaus, 128 IBLA 26 (1993); Leitmotif Mining Co., 124 IBLA 344, 346 (1992). Those elements are: (1) the party to be estopped must know the facts; (2) the party must intend that its conduct will be acted upon or must act so that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting estoppel must rely upon the former's conduct to its injury. Ptarmigon Co., 91 IBLA 113, 117 (1986), aff'd sub nom., Bolt v. United States, 994 F.2d 603 (9th Cir. 1991).

We find the Appellants have not satisfied the elements of the doctrine of estoppel set forth above. Not only is there inadequate evidence of an alleged misrepresentation of facts on the part of BLM, but there is no offer of proof in Appellants' SOR concerning the specific information provided Appellants on which they allegedly relied. More importantly, we are unable to conclude Appellants were unaware of the facts, as their SOR relates they were aware of the filing exemption requirements for small miners prior to the filing deadline on August 31, 1993.

The BLM, we conclude, properly declared the 13 claims listed in its Decision abandoned and void. Having properly determined that "George Marchuk did not have an ownership interest in the subject claims on August 30, 1993," (the claims being co-owned by Paul and Nikolaj), BLM should have simply returned the filed 1993 and 1994 certifications to him noting this fact.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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David L. Hughes
Administrative Judge